

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

McKESSON CORPORATION, a Delaware corporation,

Plaintiff,

v.

FAMILYMEDS GROUP, INC., f/k/a DRUGMAX, INC., a Nevada corporation,

Defendant.

FAMILYMEDS GROUP, INC., f/k/a DRUGMAX, INC., a Nevada corporation,

Counterclaimant,

v.

McKESSON CORPORATION, a Delaware corporation,

Counterdefendant.

CASE NO. CV-07-5715 WDB

*Related to Case No. CV-08-2850 WDB*

**STIPULATION RELATING TO ENTRY OF SATISFACTION OF JUDGMENT AND DISMISSAL OF COUNTERCLAIM IN CASE NO. CV-07-5715 WDB; AND**

**ORDER THEREON**

**[FRCP 41(a)(1)(A)(ii), 41(c), and 54(b)]**

Complaint filed:	Nov. 9, 2007
Counterclaim filed:	Dec. 17, 2007
Cross-Complaint Filed:	Dec. 17, 2007
Trial date:	None set

This "Stipulation Relating to Entry of Satisfaction of Judgment and Dismissal of Counterclaim in Case No. CV-07-5715 WDB" (this "Stipulation") is entered into by and between Familymeds, Inc., a Connecticut corporation and Familymeds Group, Inc. a Nevada corporation, f/k/a Drugmax, Inc., a Nevada corporation (collectively, "Familymeds") on the one hand, and McKesson Corporation, a Delaware corporation ("McKesson") on the other (collectively, the "Parties," and individually, each a "Party") pursuant to the terms of an "Agreement and General Release" (the "Settlement Agreement") entered into by the Parties (and by an affiliate of McKesson) on October 16, 2008. The Parties, through their respective counsel, each hereby stipulate and agree that the conditions precedent have been satisfied with respect to (a) the right of McKesson pursuant to the Settlement Agreement to file a satisfaction of judgment on account of the

1 "Judgment" granted by the Court in favor of McKesson on September 9, 2008 (the "McKesson  
2 Judgment") in Case No. CV-07-5715 WDB (the "First Action") as set forth in the Settlement  
3 Agreement, and (b) the obligation of Familymeds to dismiss with prejudice its Counterclaim in the  
4 First Action (the Cross-Complaint of Familymeds, Inc. having previously been dismissed pursuant  
5 to an "Order Dismissing 'Cross-Complaint' Without Prejudice" issued by the Court on August 4,  
6 2008). The Parties further stipulate and agree as follows (without modifying the Settlement  
7 Agreement):

8 1. Pursuant to the Settlement Agreement, McKesson is entitled to submit a satisfaction  
9 of judgment in the First Action in substantially the form of Exhibit A to this Stipulation which shall  
10 resolve the matters raised in the Complaint commencing the First Action;

11 2. The "Counterclaim for Specific Performance of Contract and Accounting; Cross-  
12 Complaint for Accounting" filed on December 17, 2007 the "Counterclaim"), by Familymeds  
13 Group, Inc. in the First Action shall be and is hereby dismissed with prejudice pursuant to Rules  
14 41(a)(1)(A)(ii) and 41(c) of the Federal Rules of Civil Procedure, each party to bear its own costs  
15 and attorneys' fees incurred with regard to the Counterclaim except as may have been provided in  
16 the Settlement Agreement; and

17 \\\

18 \\\

19 \\\

20 \\\

21 \\\

22 \\\

23 \\\

24 \\\

25 \\\

3. The prior dismissal of the "Cross-Complaint" is agreed by the Parties to be a dismissal with prejudice or to otherwise have the effect of a dismissal with prejudice and that the order dismissing the Cross-Complaint should be amended to reflect the same, each party to bear its own costs and attorneys' fees incurred with regard to the Counterclaim except as may have been provided in the Settlement Agreement.

DATED: January 23, 2009

JEFFER, MANGELS, BUTLER & MARMARO LLP  
ROBERT C. GEBHARDT  
MICHAEL A. GOLD  
MATTHEW S. KENEFICK

By: /s/ Matthew S. Kenefick

MATTHEW S. KENEFICK

Attorneys for FAMILYMEDS, INC., a Connecticut corporation and FAMILYMEDS GROUP, INC. a Nevada corporation, f/k/a DRUGMAX, INC., a Nevada corporation

DATED: January 23, 2009

HENDERSON, CAVERLY, PUM & CHARNEY LLP

By: /s/ Maria K. Pum

MARIA K. PUM

Attorneys for MCKESSON CORPORATION, a Delaware corporation

I attest that I have obtained concurrence in the filing of this document from Maria K. Pum.

/s/ Matthew S. Kenefick

### **ORDER**

PURSUANT TO THE FOREGOING STIPULATION, IT IS ORDERED that:


(1) the Satisfaction of Judgment in the form of Exhibit A may be submitted by McKesson to be approved by the Court;

(2) the "Counterclaim for Specific Performance of Contract and Accounting; Cross-Complaint for Accounting" filed on December 17, 2007 the "Counterclaim"), by Familymeds in the First Action shall be and is hereby dismissed with prejudice pursuant to Rules 41(a)(1)(A)(ii) and 41(c) of the Federal Rules of Civil Procedure, each party to bear its own costs and attorneys' fees

1 incurred with regard to the Counterclaim except as may have been provided in the Settlement  
2 Agreement; and

3 (3) the previously-issued "Order Dismissing 'Cross-Complaint' Without Prejudice"  
4 executed by the Court on August 4, 2008 shall be amended pursuant to Rule 54(b) of the Federal  
5 Rules of Civil Procedure to constitute a dismissal of the "Cross-Complaint" with prejudice.

6  
7  
8 DATED: 1/26/09

  
9 THE HONORABLE WAYNE D. BRAZIL  
10 UNITED STATES MAGISTRATE JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28